

Docket No.  
VIRB/0002.02

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Burke, et al.

Serial No.: 10/567,635 Art Unit: 1293

Filed: February 8, 2006 Examiner: Not Yet Assigned

For: IMPROVED ANTHELMINTIC FORMULATIONS

Date: August 13, 2007

**PETITION UNDER 37 CFR §1.47  
INVENTOR REFUSES TO SIGN AND  
UNAVAILABLE INVENTOR**

Mail Stop PCT  
Commissioner for Patents  
Office of PCT Legal Administration  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants respectfully petition the Commissioner to accept the accompanying Combined Declaration and Power of Attorney signed by joint inventors Ian Cottrell and Albert Ahn and not signed by joint inventors Vinay Tripathi and Michael Burke. This Petition is made under 37 CFR § 1.47.

Accompanying this Petition are exhibits 1-4 and the Declaration of Jeff Santosuoso, Vice President of Business Development of Virbac Corporation (“Virbac”) in support of the petition.

The accompanying exhibits establish that a diligent effort has been made to secure the execution by inventor Vinay Tripathi and Michael Burke of a Combined Declaration and Power of Attorney. The exhibits establish that Vinay Tripathi cannot be located after diligent search, and that the last known residence address of Mr. Tripathi is 23 The Hawthorns, Summerhill, Nenagh, Co., Tipperary area, Ireland. The exhibits also establish that Michael

Burke has refused to sign, and that the last known address of Mr. Burke is c/o Chanelle Pharmaceuticals, Athenry Road, Loughrea, County Galway, Ireland.

The following facts in support of this Petition have therefore been established:

1. In a signed letter (exhibit 1) dated October 17, 2006 to Corey Blake of Bracewell and Giuliani, Mr. Michael Burke acknowledged his receipt and review of U.S. Pat. App. 10/567,635, the instant application, and a Declaration for his signature. Mr. Burke's letter stated that he had no obligation to assist the prosecution of this application and refused to sign the Declaration in connection with this matter.

2. The same letter inquired the whereabouts of Mr. Vinay Tripathi. Mr. Burke who was Mr. Tripathi's former employer stated that he has no information concerning Vinay Tripathi's current whereabouts.

3. An email (exhibit 2) dated November 21, 2006 from T.I. Dunne of Network Investigations to Corey Blake detailed the search for Mr. Tripathi. The result of the search indicated that Mr. Tripathi has moved from Ireland to India recently and his whereabouts in India are unknown.

4. Another email (exhibit 3) on November 21, 2006 from Corey Blake to the address [vinaytripathi@yahoo.com](mailto:vinaytripathi@yahoo.com) inquired whether the addressee was involved with the above patent application, but no reply to this email was received. A reply (exhibit 4) dated November 30, 2006 to a different email address indicated that the person reached through [vtcdri@yahoo.co.in](mailto:vtcdri@yahoo.co.in) is not the same Vinay Tripathi who is the inventor in this matter.

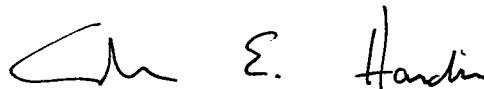
5. A Combined Declaration and Power of Attorney executed by Ian Cottrell and Albert Ahn and not signed by Vinay Tripathi and Michael Burke, is being submitted hereinwith in connection with the application.

It is respectfully submitted that this Petition and the accompanying Declaration merit a waiver of the requirement set out in 37 C.F.R. § 1.63(a) that a Declaration signed by Mr. Tripathi and Mr. Burke be submitted. Applicant therefore requests that the Patent Office accept the Combined Declaration and Power of Attorney without Mr. Tripathi and Mr. Burke's signature.

Authorization is hereby given to charge the requisite fee under 37 C.F.R. § 1.17(g) for this Petition (\$200) as well as any other fee which may now or hereafter be due, to Deposit Account No. 20-0782/VIRB/0002.02/CEH.

In the event that there are any questions, or should additional information be required, please contact applicant's attorney at the number listed below.

Respectfully submitted,



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Chance E. Hardie  
Registration No. 55,247  
PATTERSON & SHERIDAN, L.L.P.  
3040 Post Oak Blvd. Suite 1500  
Houston, TX 77056  
Telephone: (713) 623-4844  
Facsimile: (713) 623-4846  
Attorney for Applicants

# **Exhibit 1**



Chanelle Pharmaceuticals M

icturing Limited.

Loughrea  
Co.Galway  
Ireland

Telephone  
+353 (0) 91 841 788  
Web: www.chanellegroup.ie

Fax  
+353 (0) 91 842937



Your Ref.      Our Ref.      Date.

Corey Blake  
Associate  
Bracewell & Giuliani, LLP  
711 Louisiana Street, Suite 2300  
Houston, Texas 77002-2781  
USA

17<sup>th</sup> October 2006

Dear Mr. Blake,

I write in response to your e-mail dated October 4, 2006, which attached Patent Application Serial No. 10/567,635 for my review, as well as a Declaration for my execution in connection with the application. You also asked for my "assistance" in contacting Vinay Tripathi. For the following reasons, please be advised that I do not intend on executing the Declaration or any other documents related to the prosecution of any patent application owned by Virbac Corporation or any other entity.

First, by way of background, the application in question was filed by the Hartz Mountain Corporation ("Hartz") in February, 2006, and claims priority to an application originally filed by Hartz without my knowledge or consent, nor do I recollect being advised of the present application filing, which occurred during the pendency of litigation between Chanelle, Hartz and Virbac.

Second, as you should know, as part of the overall settlement between the parties, Chanelle agreed to assign to Hartz all of its rights in certain patent applications, including Serial No. 10/567,635. My understanding is that Hartz then entered into an assignment agreement with your client, Virbac, whereby both companies agreed to share or retain ownership rights in various patent applications, including Serial No. 10/567,635. Accordingly, neither Chanelle nor I have any ownership rights or other interests in any of the patent applications that were the subject of the settlement or assignment agreements between the parties.

Third, as per the assignment to Hartz, neither I nor Chanelle have any obligation, whether express or implied, to assist in the prosecution of any of the patent applications assigned. Given the significant amount of money that Chanelle paid to settle all of the claims against it, as well as the fact that Chanelle relinquished all of its rights in the patent applications that were the subject of the lawsuits, I

have no interest in assisting Virbac in connection with this or any of the other applications. I do not have, do not intend to assert, nor could I assert, any rights in the patent applications at issue -- those rights belong exclusively to Virbac and/or Hartz. To the extent that you would like me to execute a more formal document confirming this position, I would consider doing so, subject to attorney review.

Finally, although I continue to maintain that Chanelle has no obligation to assist Virbac or any other entity in the prosecution of the patent applications, please be advised that I have no information concerning Vinay Tripathi's current whereabouts.

Yours truly,



**Michael H Burke M.V.B., M.R.C.V.S.**  
**Managing Director**

# **Exhibit 2**

**Blake, Corey**

**From:** Network Investigations [networkinvestigations@elrcom.net]  
**Sent:** Tuesday, November 21, 2006 8:51 AM  
**To:** Blake, Corey  
**Subject:** FW: Vinay Tripathi  
**Attachments:** Image001.png; Image002.jpg

**Re: Vinay Skanfar Tripathi**

**WITHOUT PREJUDICE**

Mr. Blake,

We established that Vinay Skanfar Tripathi was born on 27<sup>th</sup> September, 1964. Unfortunately we could find nothing current on this man. There are apparently 16 Tripathi's living in Ireland. On 2<sup>nd</sup> June, 1993 he married his wife Monica born 24<sup>th</sup> November, 1967., she previously worked for Chanelle Pharmaceuticals. This couple have a 12 year old daughter. Vinay Tripathi had earnings of €58,000 when working with Chanelle Pharmaceuticals in 2002.

Vinay Tripathi was previously residing at 5 Jardin Drive, Loughrea, Co. Galway. He had a bank account with Allied Irish Bank (AIB), Loughrea Branch. This Branch gave him a mortgage to buy the above property, however the mortgage was cleared in May 2006. He had a mobile/cell phone 087 – 2117267 which seems to be no longer in use, and there is a unpaid bill for same. Other Galway addresses recorded for him are - 6 The Waterfront, Gorth Road, Loughrea, Co. Galway., and 3 Fortland Meadows, Dublin Road, Loughrea, Galway.

In August 2006 he was in living at 23 The Hawthorns, Summerhill, Nenagh, Co. Tipperary area. He was possibly employed with GLS Pharma, Lisbunny Business Park, Nenagh, Co. Tipperary during this time.

His last known employer seems to be J.G. Chemicals, Skule Hill, Fedamore, Limerick., Tel. 061 – 390045. We telephoned J.G. Chemicals and were told that Vinay Tripathi was no longer there, and had gone back to India a few months ago.

When we researched the Internet we found two individuals called Vinay Tripathi, who had a similar background to the Subject. One can be contacted at [vinytripathi@yahoo.com](mailto:vinytripathi@yahoo.com) and the other through the Central Drug Research Institute in Lucknow, India., and Rediff Connexions.

We did not find it necessary to speak to Michael Burke of Chanelle Pharmaceuticals, but if it is necessary we will do so with your blessing.

Regards,

T.I. Dunne,

NETWORK INVESTIGATIONS LTD.

# **Exhibit 3**

**Blake, Corey**

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**From:** Blake, Corey  
**Sent:** Tuesday, November 21, 2006 3:14 PM  
**To:** [vinaytripathi@yahoo.com](mailto:vinaytripathi@yahoo.com)  
**Subject:** Patent Application

Dear Mr. Tripathi:

I am an attorney with a U.S. law firm searching for a Vinay Tripathi who is a coinventor on a patent application for a veterinary pharmaceutical. I would appreciate your response to know whether I have contacted the correct person and apologize if I have contacted you in error.

Please feel free to contact me if you have any questions regarding this email.

Best regards,

Corey Blake  
Associate  
Bracewell & Giuliani, LLP  
711 Louisiana Street, Suite 2300  
Houston, Texas 77002-2781  
T: (713) 221-1515  
F: (713) 222-3215  
[corey.blake@bracewellgiuliani.com](mailto:corey.blake@bracewellgiuliani.com)

[www.bracewellgiuliani.com](http://www.bracewellgiuliani.com)

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BRACEWELL & GIULIANI LLP

Please visit our website at [www.bracewellgiuliani.com](http://www.bracewellgiuliani.com)

# **Exhibit 4**

**Blake, Corey**

---

**From:** vinaycdri Tripathi [vtcdri@yahoo.co.in]  
**Sent:** Thursday, November 30, 2006 3:40 AM  
**To:** Blake, Corey  
**Subject:** U.S. Patent Application No. 10/567,635

Dear Mr. Balke

This has reference to your letter dated 27/11/06 regarding coinventor in U.S. Patent Application No. 10/567,635, having name similar to me. Sorry, I am not the person to whom you are looking for.

Yours truly

Vinay Tripathi

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257122.0092  
(MWS:BPL)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : **Burke, et al.**  
Application No.: **10/567,635** Art Unit No. : **1293**  
Filed : **February 8, 2006** Examiner :  
For : **IMPROVED ANTHELMINTIC FORMULATIONS**

Mail Stop PCT  
Commissioner for Patents  
Office of PCT Legal Administration  
PO Box 1450  
Alexandria, Virginia 22313-1450

**Declaration of Jeff Santosuoso in Support of 37 C.F.R. § 1.47 Petition**

I, Jeff Santosuoso, declare the following:

1. I am the Vice President of Business Development of Virbac Corporation ("Virbac"), one of the two co-assignees having 50 percent undivided interest in the above referenced application.
2. The application was filed on February 8, 2006 and subsequently assigned by the inventors to The Hartz Mountain Corporation ("Hartz") and Chanelle Pharmaceuticals Manufacturing Limited ("Chanelle") jointly, each possessing a 50 percent undivided interest. Stroock & Stroock & Lavan, L.L.P. was appointed the counsel of record before the Patent and Trademark Office and filed the application and assignment documents.

3. Subsequently on June 29, 2006, the application was reassigned to Hartz and Virbac, each possessing a 50 percent undivided interest. Hartz and Virbac then granted a power of attorney to Bracewell & Giuliani LLP ("Bracewell") to represent both co-owners. The previous power of attorney to Stroock was revoked.

4. On February 12, 2007 Bracewell filed with the Patent and Trademark Office a response to the patent office missing parts communication.

5. The documents Bracewell and Giuliani prepared included communications demonstrating the parties' effort in an attempt to obtain signatures for the Declaration from Vinay Tripathi and Michael Burke.

6. In a signed letter dated October 17, 2006 to Corey Blake of Bracewell and Giuliani, attached here as Exhibit 1, Mr. Michael Burke acknowledged his receipt and review of U.S. Pat. App. 10/567,635, the instant application, and a Declaration for his signature.

7. Mr. Burke's letter stated that he had no obligation to assist the prosecution of this application and refused to sign the Declaration in connection with this matter.

8. The same letter inquired as to the whereabouts of Mr. Vinay Tripathi. Mr. Burke who was Mr. Tripathi's employer stated that he has no information concerning Vinay Tripathi's current whereabouts.

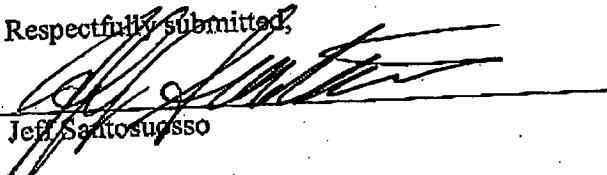
9. An email dated November 21, 2006 from T.I. Dunne of Network Investigations to Corey Blake detailed the search for Mr. Tripathi. Exhibit 2. The result of the search indicated that Mr. Tripathi has moved from Ireland to India recently and his whereabouts in India is unknown.

10. Another email on November 21, 2006 from Corey Blake to the address vinaytripathi@yahoo.com inquired whether the addressee was involved with the above patent application, but no reply to this email was received. Exhibit 3. A reply dated November 30, 2006 to a different email address indicated that the person reached through vtc dri@yahoo.co.in, is not the same Vinay Tripathi who is the inventor in this matter. Exhibit 4.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: August 9, 2007

Respectfully submitted,

  
Jeff Santosuoso